SUPREME COURT OF THE UNITED STATES.

No. 101.

ELIZABETH WALKER, DEVISEE OF ROBERT WALKER, DECEASED, PLAINTIFF IN ERROR,

vs.

FRANCIS T. TAYLOR, WM. ROBINSON, WM. E. SUBLETT, THOS. COOK, AND JOHN M. CRESUP, TRUSTEES OF THE TOWN OF COLUMBUS.

IN ERROR TO THE COURT OF APPEALS FOR THE STATE OF KENTUCKY.

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J. & G. S Gibson, printers.

Pleas before Ewing, chief justice, and Marshall and Breck, judges, composing the court of appeals for the State of Kentucky, on the 27th October, 1843.

Parties.

ELIZABETH WALKER, appellant,
against
The TRUSTEES of the town of Columbus, appellees.

Upon an appeal from a judgment of the Hickman circuit court.

Preamble.

Be it remembered that, heretofore, to wit, on the 15th day of August, one thousand eight hundred and forty-three, came the appellant, by her attorney, and filed in the clerk's office of the court of appeals the following transcript of the record and proceedings of a case had in the Hickman circuit court, to wit:

STATE OF KENTUCKY, *Hickman circuit court, sct:*

Pleas before the honorable Wiley P. Fowler, judge of the Hickman circuit court, at the court-house in Clinton, on Wednesday, the 26th day of April, 1843.

Parties.

ELIZABETH WALKER, devisee of Robert Walker, dec'd, plaintiff case,
against
FRANCIS T. TAYLOR, WM. ROBINSON, WM. E. SUBLETT, THOMAS COOK, and JOHN M. CRESUP, trustees of the town of Columbus, defendants.

Be it remembered that, heretofore, to wit, on the 14th day of September, 1842, the plaintiff, by her attorney, filed in the clerk's [office] of the Hickman circuit court her declaration; which is in the words and figures following, viz:

Declaration.

Hickman county and circuit, sct:

Elizabeth Walker, devisee of Robert Walker, deceased, complains of Francis T. Taylor, William E. Sublett, Thomas Cook, John M. Cresup, and William Robinson, trustees of the town of Columbus in said county, in custody, &c., of a plea of trespass on the case; for that whereas, on the 31st day of December, 1839, the legislature of Kentucky, by an act of that date, and approved on the same day, established a public ferry at the warehouse landing of Owen G. Cates and Robert Walker, fronting their lot No. 3 in the said town of Columbus, across the Mississippi river to the opposite shore; which said public ferry was, by said act, declared to be in the name and for the benefit of the said Owen G. Cates and said Robert Walker, and their heirs and assigns forever: Provided

said Cates and Walker should enter into bond in the county court of Hickman in the penalty of $1,000, conditioned as by said act required; which bond, in the penalty for the sum, and with the condition as required by law, they did in due time enter into and execute. And whereas also, afterwards, to wit, on the day of , said Robert Walker, deceased, in his lifetime did, by writing, purchase of and from the said Cates, all his right, title, and interest, in and to said ferry, to wit, at the county and circuit aforesaid. And whereas also, afterwards, to wit, on the 17th day of October, 1835, said Robert Walker, by his last will and testament in writing, which has since his death been duly proved and recorded as the law directs, devised to the said plaintiff all his estate for and during her natural life or widowhood, and she avers she is still unmarried; and which said ferry was lawfully used and employed in the carriage and conveyance of goods, wares, and merchandize, of foot passengers, horses, cattle, hogs, sheep, and all such other animals as are owned and used in the country, and for drays, carts, carriages, wagons, and all manner of four-wheel and two-wheel conveyances whatsoever; and for the transportation of all of which certain fees or ferriages were due and demandable, that is to say, for a foot passenger, 25 cents; for man and horse, 50 cents; for two-wheel carriages, $1 50; for four-wheel carriages, $3; for loaded wagon and team, $4 50; for each hog, sheep, head of cattle, &c., 6 and 25 cents. For which purpose the said plaintiff had been, and was, prepared with boats, hands, &c., to ferry across said river Mississippi at the place aforesaid. And the said plaintiff avers that she was put to great trouble and expense in and about the ferry aforesaid; nevertheless the said defendants, as trustees aforesaid, well knowing the premises, and contriving to disturb and injure the said plaintiff in the peaceable and lawful enjoyment of her said ferry, heretofore, to wit, on the 4 day of November, 1837, and on divers other days and times between that day and the day of filing this suit, to wit, at the county and circuit aforesaid, injuriously and unlawfully, and against the will of the said plaintiff, carried and conveyed in certain boats of them the said defendants, as trustees aforesaid, divers foot passengers, horses, cattle, hogs, carriages, carts, wagons, and other conveyances, and goods, wares, &c., for hire, over and across the said river Mississippi, and upon the same part of the same river where the said plaintiff had such ferry aforesaid, and upon the said ferry of her the said plaintiff; by reason whereof the said plaintiff has lost and been deprived of divers profits and emoluments, which otherwise would have arisen and accrued to her from the enjoyment of her said ferry; and has been, and is, greatly prejudiced and disturbed in the possession thereof, and her right and title thereto, to wit, at the county and circuit aforesaid, and to the damage of the said plaintiff $4,000.

2. And the said plaintiff further says that she, the said plaintiff, so being entitled as devisee aforesaid to the said ferry aforesaid, the said defendants, as trustees aforesaid, well knowing the premises, and contriving to disturb and injure the said plaintiff in the peaceable and lawful enjoyment of her said ferry, heretofore, and whilst the said plaintiff was so entitled to said ferry as aforesaid, to wit, on the 10th day of November,

1837, and on divers other days and times between that day and the bringing this suit at the county and circuit aforesaid, injuriously and unlawfully, and against the will of the said plaintiff, carried and conveyed in certain boats of them, said defendants, or of their lessee of said ferry, divers foot passengers, horses, cattle, hogs, sheep, carriages, and all manner of other conveyances, for hire, over and across said river Mississippi, near to the said part of said river where the said plaintiff had such as aforesaid, and near to the said ferry of her the said plaintiff; and by reason whereof she, the said plaintiff, has lost and been deprived of divers other profits and emoluments, which would have arisen and accrued to her from the enjoyment of her said ferry, and has been, and is, greatly prejudiced and disturbed in the possession thereof, and her right and title thereto, to wit, at the county and circuit aforesaid, to the damage of said plaintiff $4,000; and *here* she sues, &c.

J. B. HUSBANDS, *P. Q.*

The Commonwealth of Kentucky to the capias sheriff of Hickman county, greeting:

We command you to take Francis T. Taylor, William E. Sublett, Thomas Cook, John M. Cresup, and William Robinson, trustees of the town of Columbus, if they be found within your bailiwick, and them safely keep, so that you have their bodies before the judge of our Hickman circuit court, at the court-house in the town of Clinton, on the first day of our next October term, to answer Elizabeth Walker, devisee of Robert Walker, deceased, of a plea of trespass on the case; damage $4,000, and have then there this writ.

Witness William H. H. Taylor, clerk of our said court, at the court-house aforesaid, this 14th day of September, 1842, and in the 51st year of the Commonwealth.

W. H. H. TAYLOR, *Clerk.*

Return.

Fully executed, September 26, 1842.

E. L. WATSON, *D. S.*,
For E. T. WRIGHT, *S. H. C.*

And afterwards, to wit, at a circuit court continued and held for Hickman county, at the court-house in Clinton, on Monday, the 24th day of October, 1842.

Order filing pleas, Nos. 1, 2, 3, 4, *and* 5.

This day came the defendants, by their attorney, and filed pleas Nos. 1, 2, 3, 4, and 5.

No. 1.

1st. The defendants come and defend, when and where, &c., and for plea they say that the plaintiff, her action to have and maintain against them ought not, because they say that, on the 27 day of December, 1820, by an act of the General Assembly of the Commonwealth of Kentucky, William Croghan, Joseph Rogers Underwood, Richard Taylor,

jr., William Montgomery, and David L. McKee, were constituted and appointed trustees for establishing and laying off a town at the Iron banks; that, on the 8th day of May, 1821, a grant from the said Commonwealth for 4,000 acres of land, including the said Iron banks, was issued in favor of said Croghan, Underwood, Taylor, Montgomery, and McKee, vesting them with the title to said 4,000 acres of land; that thereafter, and prior to the 31st of December, 1829, the said Underwood, Taylor, and Montgomery, constituting a majority of the said trustees, did, in pursuance of the authority vested in them by law, lay off a town upon the said tract of 4,000 acres of land, the original plan and map of which is herewith exhibited. And the defendants aver the lot No. 3, in the plaintiff's declaration mentioned, is one of the lots designated and known on the plan and map of said town by its said number; and the defendants aver that the said lot No. 3 does not extend to, or bind upon, the Mississippi river; that there is a street between said lot No. 3 and said river, designated and known on the plan and map of said town; which town was known and called by the trustees Columbus, and which street between said lot No. 3 and said river, was named and called by the said trustees Water street, and is ten poles wide. And the defendants aver that there is between said Water street and low water mark a space of ground, and that ground, together with all other ground and land between the river Mississippi and the lots laid off in said town, was reserved as a common, and to protect the town from the falling in of the bluffs. And the defendants aver that ferries across the Mississippi were reserved by the trustees in laying off said town, as the common property of the citizens of the town, to be leased by the trustees and their successors, and the money arising therefrom to be applied to public uses. And the defendants aver that, by virtue of the said act of the 27th of December, 1820, and the several other acts of the General Assembly of the Commonwealth of Kentucky, and the said grant for said 4,000 acres of land, dated the said 8th of May, 1821, and the laying off and establishing the said town of Columbus in manner and form, and with the reservation exhibited and set forth in said original plan and map, the title to all the land and ground, and to all ferry privileges across the Mississippi river, from the ground and land between the lots laid off in said town and the said river, were, and now are, fully vested in the said trustees, for the use and benefit of the citizens of said town; all which these defendants are ready and now offer to prove and verify. And the defendants *aver* further aver, that the trustees of said town, being so invested with the title to the said ground and land between the lots in said town and the said river to low water mark, and with all ferry privileges, rights, and authorities, from such ground and lands across said river, did, by themselves and their lessees, from time to time, ferry and transport all manner of foot passengers, horses, cattle, hogs, sheep, and all such other animals as are owned and used in the country, and all drays, carts, carriages, wagons, and all manner of four-wheeled and two-wheel carriages whatever, and all sorts of carriages whatever, for hire, in the ferry boats of these defendants, and their lessees, as well they might and of right did do, from the said 4 day of November, 1837, in the declaration men-

tioned on that day, and ever since; which are the same disturbances, hindrances, and injuries of the plaintiffs in the several courts of her declaration complained of, and not other. And the defendants further aver that the ferry rights and privileges, so as aforesaid reserved, secured, and sanctioned by law in behalf of the trustees of said town, and especially sanctioned and confirmed by an act of the General Assembly of the Commonwealth of Kentucky, approved on the 17th day of December, 1825, existed, and were in full force before, at the time, and have so continued ever since the pretended act in the declaration mentioned, establishing a public ferry for the benefit of Owen G. Cates and Robert Walker, and their heirs and assigns, fronting their lot No. 3 in said town of Columbus, across the Mississippi river to the opposite shore. And the defendants further aver that the ferry rights and privileges of said trustees, so existing by themselves and lessees, prepared boats and hands for ferrying and transporting all persons and property across the Mississippi river, from the town of Columbus to the opposite shore; and such boats and hands, or ferrymen, were ready to do and perform all manner of ferrying from the landings of said trustees opposite to, and between, the lots in the town of Columbus and low water mark on the said river to the opposite shore, before, at the time, and ever since the said pretended act in the declaration mentioned, for the benefit of said Cates and Walker, was passed; and so the defendants say that the said act, dated the 31st of December, 1829, purporting to establish a public ferry at the warehouse landing of Owen G. Cates and Robert Walker, fronting their lot No. 3 in the town of Columbus, over the Mississippi river to the opposite shore, is unconstitutional and void, being an attempt to impair and divest prior vested rights, without compensation therefor; all of which the defendants are ready to verify and prove, and without which they are guilty in manner and form as the plaintiff against them hath declared; wherefore, &c.

MAYS, &c.

Plea No. 2.

2. And for further plea in this behalf the defendants say, plaintiff actio non, because they say that the act of Assembly in the declaration mentioned, approved on the 31st of December, 1829, purporting to establish a ferry for the benefit of Owen G. Cates and Robert Walker, and their heirs and assigns forever, was fraudulently procured by the said Cates and Walker, and their aiders and counsellors in this, to wit: That the said Cates and Walker had no warehouse landing fronting their lot No. 3 in the town of Columbus, before or at the time of the passage of said act; that there was a ferry in operation, established by the trustees of the town of Columbus, and ready and capable of accommodating the public in transporting all persons and property across the Mississippi river, from the town of Columbus to the opposite shore, before, at the time, and *before* the passage of said act; of which ferry said Cates was the lessee, and the said Walker his surety, at the time of the passage of said act, and that said lot No. 3 did not bind upon or touch the Mississippi river; all which facts were fraudulently concealed from the General Assembly by the said Cates and Walker, at and before the passage of said act for their benefit; and all which facts these defendants aver did exist,

and of which the said Cates and Walker had full knowledge, before and at the time said act was passed, and which they fraudulently concealed from the General Assembly of the Commonwealth of Kentucky. And the defendants aver that the said Cates and Walker gave no notice to the trustees of the town of Columbus, of their intention to apply for the establishment of a ferry across the Mississippi river, opposite their lot No. 3 in said town, well knowing, as they did, that such ferry, if established, would materially prejudice and injure the ferry then in operation, and owned by the said trustees; wherefore the said defendants say that the said act was fraudulently procured, and being so procured is null and void; all which they are ready to verify and prove; wherefore, &c.

MAYS, &c., *P. D.*

Plea No. 3.

3. And for further plea in this behalf the defendants say, plaintiff actio non, because they say that the act of Assembly in the declaration mentioned, so far as the same purported to establish a public ferry at the warehouse landing of Owen G. Cates and Robert Walker, fronting the lot No. 3 in the town of Columbus, across the Mississippi river to the opposite shore, was repealed by an act of the General Assembly of the Commonwealth of Kentucky, approved January 15th, 1831; since which time the defendants aver that said Cates and Walker, or either of them, or the heirs or assigns of either of them, or the said plaintiff, hath not had any ferry boats *of* ferrymen prepared to ferry persons or property across the said river, nor hath said plaintiff, nor those under whom she claims, used or exercised any ferry right and privilege as now claimed in virtue of said act in the declaration mentioned; all which the defendants are ready to verify, &c.; wherefore, &c.

Plea No. 4.

4. And for further plea in this behalf the defendants [say,] plaintiff actio non, because they say that the plaintiff had not, neither had those under whom she claims, within five years next before the commencement of this suit, any ferry boats or ferry in actual use, and employed in the transportation of any persons or property, or ferrying across the Mississippi river any such persons or articles of property as is set forth in the declaration; and so the defendants aver that the cause of action hath not accrued within five years next before the suing out the original writ; and this they are ready to verify, &c.; wherefore, &c.

MAYS, &c., *P. D.*

Plea No. 5.

5. And for further plea in this behalf the defendants say, plaintiff actio non, because they say they are not guilty in manner and form as the said plaintiff against them hath declared, and of this they put themselves upon the country.

MAYES, &c.

And plaintiff likewise.

HUSBANDS, BOWMAN, &c., *P. D.*

And afterwards, to wit, at a circuit court continued and held for Hickman county, at the court-house in Clinton, on Tuesday, the 25th day of April, 1843.

Order filing demurrers.—Defendants file joinders to demurrers.—Demurrers to pleas 2, 3, and 4, sustained.—Overruled as to plea No. 1.

This day came the parties by their attornies, and the plaintiff filed separate demurrers to pleas Nos. 1, 2, 3, and 4, and joined issue to plea No. 5. And the defendants filed joinders to said demurrer, and the matters of law arising thereon being argued, and by the court sufficiently understood, it seems to the court that the law is for the plaintiff, as to pleas 2, 3, and 4, and that said demurrers to said plea be sustained; but that the law is for the defendants as to plea No. 1, and that the demurrer to said plea be overruled.

And on this day, to wit, a circuit court continued and held for Hickman county, at the court-house in Clinton, on Wednesday, the 26th day of April, 1843, this day came the parties, by their attornies, and the plaintiff failing to answer defendants' plea No. 1.

Judgment for want of replication to plea No. 1.

It is considered by the court that the defendants have judgment for the want of replication to said plea No. 1. It is therefore considered by the court that the plaintiff take nothing by her bill, but for her false clamor be in mercy, &c.; and that the defendants go hence hereof without day, and recover against the plaintiff their costs about their defence herein expended, and that execution issue, &c.

Appeal granted.

And, on motion of the plaintiff, an appeal is granted her to the court of appeals, upon her executing bond in the penalty of $100, in the clerk's office of this court within twenty days, with B. Woodruff, James Moore, and W. J. Walker, or either of them, as her securities, conditioned according to law.

Appeal bond.

Know all men by these presents, that we, Elizabeth Walker, executrix of Robert Walker, deceased, and William J. Walker, are held and firmly bound unto Francis T. Taylor, William Robinson, William E. Sublett, Thomas Cook, and John M. Cresup, trustees of the town of Columbus, in the sum of $100; for the payment of which, well and truly to be made, we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents. Sealed and dated this 4th day of May, 1843.

The condition of the above obligation is such, that whereas, at a circuit court continued and held for Hickman county, at the court-house in Clinton, on Wednesday, the 26th day of April, 1843, in an action of trespass on the case, pending in said court between the above bound Elizabeth Walker, devisee of Robert Walker, deceased, plaintiff, and the above named Francis T. Taylor, William Robinson, William E. Sublett, Thomas Cook, and John M. Cresup, defendants, have judgment, for the

want of a replication to plea No. 1, and recover their costs, &c.; from which judgment the above bound Elizabeth Walker, devisee of Robert Walker, deceased, prayed an appeal to the court of appeals. If, therefore, the said Elizabeth Walker, devisee as aforesaid, shall prosecute said appeal with effect, or shall well and truly pay the costs and damages as shall be awarded against her in case the judgment shall be affirmed, then the above obligation to be void, else to remain in full force and virtue.

ELIZABETH WALKER, [SEAL.]
Devisee of R. Walker.
W. J. WALKER. [SEAL.]

Attest: W. H. H. TAYLOR, *Clerk.*

Clerk's certificate.

I, William H. H. Taylor, clerk of the Hickman circuit court, certify, that the foregoing pages, fifteen in number including this, contain a full and complete transcript of the record and proceedings had in the cause therein mentioned.

Given under my hand, this 9th day of May, 1843.

W. H. H. TAYLOR.

The appellant assigned the following errors to the judgment below, to wit:

"WALKER vs. TAYLOR, &c. } Errors.

Errors.

The plaintiff assigns as error, that the court erred in giving judgment on the demurrer for the defendants below, as to the first plea pleaded.

2. The judgment on demurrer should have been in favor of the appellant.

3. The court erred in giving judgment against the appellant, and in favor of the appellees.

WICKLIFFE."

Cause heard.

At a court of appeals continued and held for the State of Kentucky, on the 2nd October, 1843, came the parties, by their attornies, and the appeal came on and was heard, but the court not being sufficiently advised, took time; and, on the 27th of said month, the court being sufficiently advised of and concerning the premises, delivered the following *upon* and judgment, to wit:

Opinion of the court of appeals.

Elizabeth Walker, as devisee of Robert Walker, deceased, brought this action in case against the trustees of the town of Columbus, for injuriously and wrongfully obstructing her in her ferry privileges, and keeping her out of the tolls of the same, from the town of Columbus across the Mississippi river. The trustees pleaded their right to the franchise and the tolls, and set forth in their plea the facts upon which they base their right. This plea was demurred to by the plaintiff, and her

demurrer overruled; and refusing to reply further, judgment was rendered against her, and she has applied to this court.

It appears that Croghan, Underwood, and others, under acts of the Legislature of Kentucky, (statute laws, 2d, 1,044-'46,) laid off the town of Columbus into lots, streets, alleys, and public ground, and made and recorded a plan therefor, by which they left an open space of ten poles as a common, along the margin of the river, between low water mark and the lots next to the river; that this common was dedicated to public use, and was appropriated and used as such from the time the town was laid off and established; that, in 1825, (acts of Assembly of that year, 71,) the Legislature, after authorising the trustees to sell the whole of the in-and-out lots in said town, enacted the following provision: "That the trustees of said town, or a majority of them, may fix the rates of ferriage across the Mississippi river, and they may also lease out ferries for any term of years not exceeding five, and apply the rents to the improvements of the town." By a subsequent act, passed in 1829, acts of Assembly of that year 31, it was provided, "That a public ferry be, and the same is hereby, established at the warehouse landing of Owen G. Cates and Robert Walker, fronting their lot No. 3 in the town of Columbus, across the Mississippi river to the opposite shore, and that said ferry be in the name, and for the benefit, of said Cates and Walker, their heirs and assigns forever: Provided, however, that said Cates and Walker enter into bond, in the county court of Hickman, in the penalty of $1,000, conditioned for the faithful performance of the duties required of other ferry keepers by law in this Commonwealth."

At the next session of the Legislature (session acts of the year 1830-'31, 149) the last statute was repealed, and the former one was re-enacted and restored; and it was further enacted, "That all the ferry rights and privileges, from the public ground on the margin of the Mississippi river at the town of Columbus, across the said river to the opposite shore, are hereby *regranted* and *confirmed* to the trustees of said town, and their successors in office, for the use and benefit of the inhabitants thereof; and said trustees are hereby vested with power and authority to lease one or more *firms* from said public ground, from time to time, not exceeding five years at any one time."

Lot No. 3, owned by Cates and Walker, lay fronting the open space or common which lay between, and separated their lot from, the river. Mrs. Walker claims the ferry franchise by virtue of the act of 1829, and as devisee of Walker, the grantee under that act, to whom Cates had sold and transferred his joint interest; the trustees claim by virtue of the acts of 1825, and 1830-'31, above cited, and as fee simple legal holders of the common which lies along the margin of the river; the former insists that the act of 1830-'31, repealing the act which vested the franchise in Cates and Walker, and vesting it in the trustees, was unconstitutional and void, as divesting them [of] a valuable right which had been before granted to them, and that the trustees had no vested right to the ferry before; that the legal title to the common or ground, to the margin of the river, was in the trustees, there can be no doubt—3d Ben. Monroe, 440, trustees of Augustus vs. Perkins; 4th Lit. 119, trustees of Fal-

mouth vs. Harter; 2d J. J. Mar. 225, trustees of Maysville vs. Boone. If it be conceded that, as the legal holders of the soil, they are not legally entitled to the ferry privilege, as incidental to the ownership of the soil, but that the government may grant it to others for the public good, and without compensation first made; yet, as there is seeming justice and propriety in granting the franchise to the owners of the soil, and injustice in granting it to others, unless imperious public good requires it, a liberal interpretation should be given to the acts which import a grant to those who are in justice and propriety entitled, and a strict construction to those which attempt to divest them of it. Adopting this rule of interpretation, the statute of 1825 may be construed as vesting at least the beneficial interest in the franchise in the trustees *absolutely*, and not barely for a term of years. We do not understand the act as giving to the trustees the authority merely to lease the ferry for a *single term* of five years, and apply the rents to the improvement of the town, but as giving to them the indefinite and unlimited power to lease, and apply the proceeds as directed, limiting them only as fiduciaries, out of abundant caution, and with an eye to the future increase of the town, to the term of five years, as the ultimatum as the time for which they may lease at any time. The statute clearly recognises and sanctions an *existing right* in the trustees, and prescribes and directs the manner in which the trustees may exercise that right, and apply the profits. This recognition and sanction of their right, and unlimited appropriation of the profits or usufructuary interest to and for the benefit of the town, is tantamount to, and in effect, a direct grant; and if the Legislature had not the constitutional power, by the act of 1830–'1, to divest Cates and Walker of a vested right claimed under the act of 1829, neither had they the power, by the act of 1829, to divest the trustees and the town of their right, recognized as vested, and the usufructuary interest certainly granted by the act of 1825, and perpetually granted, according to our interpretation of the act. The beneficial interest in the town, if that alone was granted, is as much protected by the Constitution, and can no more be divested than the naked fee. The act of 1830–'1, not only repeals the act of 1829, which they had the right and power to do, whether the same was unconstitutionally or surreptitiously obtained, but it is a declaratory annunciation of the legislative intention and interpretation of the act of 1825, which accords with the interpretation which we have given to it.

The judgment of the circuit court is therefore affirmed, with costs; which is ordered to be certified to said court. And it is further considered by the court, that the appellees recover against the appellant their costs herein expended.—Fee, $6 00.

State of Kentucky, sct:

As clerk of the court of appeals for the State of Kentucky, [I] do certify, that the foregoing pages contain a true, full, and complete, transcript of the record and proceedings had in the case therein mentioned.

In testimony whereof, I have hereto set my hand and seal of office, [L. S.] this 15 November, 1843.

J. SWIGERT, *C. C A.*